

2013 WL 5173730 (Ill.Cir.Ct.) (Trial Pleading)

Circuit Court of Illinois.

County Department

Law Division

Cook County

Kathleen SZEWCZYK, Plaintiff,

v.

THE CHARLES SCHWAB CORPORATION, Charles Schwab & Co., Charles Schwab Bank, and  
Catholic Charities of the Archdiocese of Chicago Department of Social Services, Defendants.

No. 2013-L-09596.

August 27, 2013.

### **Verified Complaint At Law**

[Timothy A. Scott](#), [David A. Ellis](#), The Freydin Law Firm, LLP, 8707 Skokie Blvd., Suite 305, Skokie, Illinois 60077, Tel: (847) 972-6157, Fax: (866) 575-3765, Firm ID: 43953.

NOW COMES the Plaintiff, KATHLEEN SZEWCZYK, by and through her attorneys, the Freydin Law Firm LLP, and for her Complaint against CHARLES SCHWAB CORPORATION, CHARLES SCHWAB & CO., CHARLES SCHWAB BANK, and CATHOLIC CHARITIES OF THE ARCHDIOCESE OF CHICAGO DEPARTMENT OF SOCIAL SERVICES states as follows:

### **NATURE OF THE CASE**

1. This civil action arises from Defendants, CHARLES SCHWAB CORPORATION, CHARLES SCHWAB & CO., and CHARLES SCHWAB BANK, failure to execute trades for, and for wrongfully withholding funds of, Plaintiff, KATHLEEN SZEWCZYK. Moreover, these Defendants, together with the Catholic Charities, wrongfully interfered in Ms. Szewczyk's personal and business affairs despite her repeated declaration, individually by financial professionals, that she did not need or want their assistance. Defendants not only failed to execute orders, but refused Plaintiff access to her funds for more than 92 days, and caused investigators from the Catholic Charities and the Hoffman Estates Police Department to descend upon her home numerous times causing her undue stress and embarrassment in front of friends and neighbors. Collectively, Defendants' actions proximately caused Plaintiff to suffer substantial financial and emotional damages. Plaintiff files this four count Verified Complaint for (1) violations of the Illinois Consumer Fraud Act; (2) failure to execute payment orders; (3) breach of contract; and (4) intentional infliction of emotional distress, to recoup those damages.

### **PARTIES AND JURISDICTION**

2. Plaintiff, Kathleen Szewczyk, ("Plaintiff" or "Szewczyk") is a natural person residing in Cook County, Illinois.

3. Defendant, The Charles Schwab Corporation, ("Schwab Corp.") is a corporation incorporated under the laws of Delaware, having a headquarters San Francisco, California, and is authorized to conduct business and conducts business in Illinois.

4. Defendant, Charles Schwab & Co., ("Schwab & Co.") is a corporation incorporated under the laws of Delaware, having a headquarters San Francisco, California, and is authorized to conduct business and conducts business in Illinois.

5. Defendant, Charles Schwab Bank, (“Schwab Bank”) is a corporation incorporated under the laws of Delaware, having a headquarters San Francisco, California, and is authorized to conduct business and conducts business in Illinois.

6. The Schwab Defendants will be collectively referred to herein as “Schwab” or “The Schwab Defendants.”

7. Defendant, Catholic Charities of the Archdiocese of Chicago, Department of Social Services, (“Catholic Charities”) is an Illinois corporation and located in Chicago, Cook County, Illinois.

## FACTS

8. The allegations of the Verified Complaint are based solely on representations made by Plaintiff and in reference to information provided by Plaintiff.

9. On or about June 24, 2011, Plaintiff, contacted Schwab about opening investment accounts, and was directed to Schwab's South Barrington, Illinois, branch.

10. On or about June 24, 2011, Plaintiff, spoke with Schwab employee, Hana Hanachi, who explained the services that Schwab could offer.

11. Based on these representations, Plaintiff executed applications for a Schwab Bank High Yield Investor Checking Account and a Schwab One brokerage account at Schwab's South Barrington, Illinois, branch.

12. Plaintiff funded these accounts (with a joint account holder), with \$650,000.00 on June 24, 2011.

13. Also on that date, Plaintiff placed orders for (1) \$100,000.00 of Apple Computer shares; (2) \$100,000.00 of Apple Computer Call-Options; (3) \$100,000.00 of Google shares; and (4) and \$100,000.00 of Google Call-Options. The remaining funds were for Plaintiff to invest on her own behalf.

14. On or about June 30, 2011, Schwab sent Szewczyk a letter confirming that the accounts were opened and funded with Plaintiff's money (*See Exhibit A Schwab Welcome Letter*).

15. The letter provided instructions on how to access her accounts electronically and how to track and manage her investment portfolio (*See Exhibit A Schwab Welcome Letter*).

16. After Plaintiff received the instructions, she attempted to electronically access her Schwab accounts, but could not gain access.

17. Plaintiff called Defendants multiple times to inquire why she could not access her Schwab accounts electronically, but was never given an explanation.

18. On or about July 1, 2011, Plaintiff received a call from neighbors (while out to dinner) that Hoffman Estates Police officers were at her home, purportedly investigating her mental and financial well-being. The neighbors were told that the investigation related to her Schwab accounts.

19. On or about July 3, 2011, Plaintiff received a letter from the Catholic Charities, purportedly investigating her mental and financial well-being.

20. The Catholic Charities purportedly contacted Plaintiff about her mental clarity and ability to manage her own financial affairs, based on allegations of **elder abuse** made by Schwab Bank and related to the accounts opened in June, 2011.

21. Plaintiff explained that she had nearly 35 years of accounting experience and was well suited to manage her own financial affairs, and requested that they cease and desist from any further involvement.

22. Plaintiff called the police and the Catholic Charities and informed them that her mental and financial well-being was in good condition.

23. Despite her requests, the Hoffman Estates Police Department and Catholic Charities, at the behest of Schwab Bank, continued questioning friends and neighbors about Plaintiffs mental and financial well-being.

24. On or about July 6, 2011, the Schwab Defendants sent Plaintiff a letter, notifying her that they closed her accounts. (*See Exhibit B Schwab Account Termination Letter*).

25. Schwab informed Plaintiff that her checking and brokerage accounts needed to be liquidated immediately.

26. The letter provided specifically that “the account was restricted to liquidations only and that immediate steps to liquidate or transfer the balance must be taken.” (*See Exhibit B Schwab Account Termination Letter*).

27. On or about July 11, 2011, the Hoffman Estates Police Department, accompanied by a representative from the Catholic Charities, swarmed and entered Plaintiff's house to investigate her mental and financial well-being in relation to her Schwab Bank accounts.

28. At that time, Plaintiff again informed the police and the Catholic Charities that she was mentally stable, able to make sound decisions about her investments, and was not **abused**. She demanded that they stop investigating into her personal matters.

29. Despite her demands on or about July 15, 2011, the Hoffman Estates Police Department, for a fourth time, came to Plaintiffs house to investigate her mental and financial well-being.

30. Again, Plaintiff told the Hoffman Estates Police Department that there was no problem with her mental and financial well-being.

31. Although Charles Schwab & Co. notified Plaintiff in the July 6, 2011, letter that the account needed to be liquidated, it froze Plaintiffs accounts and refused to release the funds or any account information to Plaintiff.

32. At no time whatsoever, was Plaintiff ever able to access the money deposited in the Schwab accounts.

33. Plaintiff enlisted a representative from Wells Fargo Bank who agreed to help her obtain the \$650,000.00 that Schwab refused to release.

34. Shortly thereafter, a representative from Wells Fargo Bank accompanied Plaintiff to Schwab's Illinois headquarters, and attempted to speak to a branch manager about releasing the funds.

35. The representatives from Schwab refused to speak to the Wells Fargo Bank representative, and refused to release the funds.

36. At that time, Plaintiff was forced to retain an attorney to recover her funds from Schwab.

37. After Plaintiff's attorney contacted Schwab, they finally agreed to release \$400,000.00.

38. Plaintiff ordered the entire \$650,000.00 to be transferred to an account created by Plaintiff at Harris Bank.

39. After more than 60 days, Charles Schwab liquidated \$400,000.00 of Plaintiffs funds and transferred those funds to a Harris Bank account that was created by Plaintiff.

40. Schwab, however, refused to release the balance of her funds, purportedly for safe-keeping Plaintiffs interests, despite Plaintiffs demands that the entire amount be liquidated and transferred.

41. On September 26, 2011, after multiple requests by Plaintiff's attorney, Charles Schwab transferred Plaintiffs remaining funds into an account at Harris Bank.

42. Significantly, during the time that Schwab was "safekeeping" Plaintiff's money, and denying her access to the funds, it maintained Plaintiffs money in "a general investment account" which lost \$14,000.00 during the time it refused Plaintiff access.

43. Because of Defendants' actions, Plaintiff incurred substantial economic damages including, but not limited to: (1) the loss of income from of the Apple and Google shares and call-orders that Defendants failed to place; (2) the loss of value of the funds held in a "general investment account;" (3) the loss of value of the funds that Plaintiff could have invested otherwise; (4) fees and costs associated with the account while frozen; and (5) attorneys' fees to release her money.

## COUNT I

### UNFAIR PRACTICES UNDER THE CONSUMER FRAUD ACT

44. Plaintiff restates and incorporates the preceding allegations as fully stated herein.

45. Plaintiff brings Count I against the Schwab Defendants as an action for damages for violation of the Illinois Consumer Fraud and Deceptive Practices Act, [815 ILCS 505/1 et seq.](#), (hereinafter "Consumer Fraud Act").

46. At all pertinent times, Defendants were engaged in trade or commerce within the meaning of the Consumer Fraud Act, and Plaintiff was a consumer within the Act's coverage.

47. The actions set out above constitute unfair practices within the meaning of and in violation of [815 ILCS §505/2](#) of the Consumer Fraud Act in that:

- a. Defendants had a duty to invest in the Apple Shares and Google Shares, as agreed, as soon as the transfer was made; however, Defendants did not make the investment and did not immediately liquidate the accounts and return the funds to Plaintiffs. Defendants' actions are completely unjustified and constitute a violation of public policy.
- b. Defendants' behavior was immoral, unethical, and oppressive in that they withheld Plaintiff's funds for an extended period of time, while demanding Plaintiff liquidate the account and simultaneously prevented her from doing so.
- c. Defendants caused substantial injury to Plaintiff by withholding these funds, which were not accruing interest, and by not buying the Apple Shares and Google Shares, as agreed, and by unlawfully withholding the funds, therefore not allowing Plaintiff to avoid this injury.
- d. Defendants caused Plaintiff to take a loss by withholding her money and investing it in the general investment fund.
- e. Defendants' actions caused Plaintiff to incur attorneys' fees in order to recover funds wrongly withheld by Defendants.

48. Defendants' actions, as set out above, were willful, deliberate, and malicious.

49. Defendants' actions were willful, deliberate, and malicious and Defendants knowingly violated Plaintiffs' rights.

50. Plaintiff suffered actual and consequential damages from Defendants' willful acts. WHEREFORE, Plaintiff respectfully requests this Court to enter an Order as follows:

A. For entry of a judgment in favor of Plaintiff and against Defendants in the amount in excess of \$100,000.00 the jurisdictional limit of this court;

B. For punitive damages;

C. For reasonable attorneys' fees;

D. For all costs of suit; and

E. For such other and further relief as this Court determines appropriate and just.

## COUNT II

### FAILURE TO EXECUTE PAYMENT ORDER

51. Plaintiff restates and incorporates the preceding allegations as fully stated herein.

52. Plaintiff brings Count II against Defendants as an action for damages for its violation of the Illinois [810 ILCS 5/4A-305](#).

53. On or about June 24, 2011, Plaintiff opened a Schwab Bank High Yield Investor Checking Account and a Schwab One brokerage account at Schwab Bank.

54. On that date, Plaintiff placed orders for (1) \$100,000.00 of Apple Computer shares; (2) \$100,000.00 of Apple Computer Call-Options; (3) \$100,000.00 of Google shares; and (4) and \$100,000.00 of Google Call-Options.

55. On or about June 30, 2011, Schwab sent Plaintiff a letter confirming that the accounts were opened and funded with Plaintiff's money.

56. On or about July 6, 2011, the Schwab Defendants sent Plaintiff a letter, notifying her that they closed her accounts.

57. Schwab informed Plaintiff that her checking and brokerage accounts needed to be liquidated immediately. At that time Plaintiff learned that Schwab failed to execute her orders.

58. The letter provided specifically that "the account was restricted to liquidations only and that immediate steps to liquidate or transfer the balance must be taken. (*See Exhibit B Schwab Account Termination Letter*).

59. The actions set out above constitute late or improper execution or failure to execute a payment order in violation of [810 ILCS 5/4A-305\(a\)](#) in that:

a. Defendants had a duty to invest in the Apple Shares and Google Shares, as agreed, as soon as the transfer was made;

b. Defendants delayed the execution of a payment order which resulted in delay to the beneficiary Plaintiff;

c. Defendants caused substantial injury to Plaintiffs and is obliged to pay interest to Plaintiff of the funds transferred for the period of delay caused by the failed execution.

60. Because of Defendants' actions, Plaintiff incurred substantial economic damages including, but not limited to: (1) the loss of the increase of value of the Apple and Google shares and call-orders; (2) the loss of value of the funds held in a "general investment account;" (3) the loss of value of the funds that Plaintiff could have invested otherwise; (4) fees and costs associated with the account while frozen; and (5) attorneys' fees to release her money.

WHEREFORE, Plaintiff respectfully requests this Court to enter an Order as follows:

A. For entry of a judgment in favor of Plaintiff and against Defendants in the amount in excess of \$100,000.00 the jurisdictional limit of this court;

B. For reasonable attorney's fees;

C. For all costs of suit; and

D. For such other and further relief as this Court determines appropriate and just.

### **COUNT III**

#### **BREACH OF CONTRACT**

61. Plaintiff restates and incorporates the preceding allegations as fully stated herein.

62. Plaintiff brings Count III against Defendants for breach of contract.

63. On or about June 24, 2011, Plaintiff opened a Schwab Bank High Yield Investor Checking Account and a Schwab One brokerage account at Schwab Bank.

64. On that date, Plaintiff placed orders for (1) \$100,000.00 of Apple Computer shares; (2) \$100,000.00 of Apple Computer Call-Options; (3) \$100,000.00 of Google shares; and (4) and \$100,000.00 of Google Call-Options. The remaining funds were for Plaintiff to invest on her own behalf.

65. On or about June 30, 2011, Schwab sent Plaintiff a letter confirming that the accounts were opened and funded with Plaintiff's money.

66. After the contract had been executed, Defendant should have ordered the Apple Shares and Google Shares as directed by Plaintiff and agreed upon by Schwab.

67. As a result of the unexpected closure of Plaintiff's accounts, the Apple Shares and Google Shares were never invested.

68. On or about July 6, 2011, the Schwab Defendants sent Plaintiff a letter, notifying her that they closed her accounts.

69. Schwab informed Plaintiff that her checking and brokerage accounts needed to be liquidated immediately.

70. Schwab failed to perform their work as agreed in the contract which is relative to the cause of action.

71. Plaintiff alleges that Defendants failure to perform the obligations in the written contract was a proximate cause of damages to Plaintiff.

72. Plaintiff alleges that Defendants have wrongfully breached the terms of the contract by failing to complete the work promised to be performed.

WHEREFORE, Plaintiff respectfully requests this Court to enter an Order as follows:

A. For entry of a judgment in favor of Plaintiff and against Defendants in the amount in excess of \$100,000.00 the jurisdictional limit of this court;

B. For lost damages in excess of the jurisdictional limit of this court;

C. For reasonable attorney's fees;

D. For all costs of suit; and

E. For such other and further relief as this Court determines appropriate and just.

#### **COUNT IV**

##### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

73. Plaintiff restates and incorporates the preceding allegations as fully stated herein.

74. Plaintiff brings Count IV against Defendants as an action for intentional infliction of emotional distress.

75. Schwab's conduct described herein is extreme and outrageous.

76. Schwab recklessly disregarded the high probability that its conduct would inflict severe emotional distress upon Plaintiff and its conduct, did, in fact, cause Plaintiff severe emotional distress.

77. Plaintiff suffered some emotional distress as a result of Schwab's, actions set forth in the facts above, and continues to do so to this day.

WHEREFORE, Plaintiff respectfully requests this Court to enter an Order as follows:

A. For entry of a judgment in favor of Plaintiff and against Defendants in the amount in excess of \$100,000.00 the jurisdictional limit of this court;

B. For punitive damages in excess of the jurisdictional limit of this court;

C. For all costs of suit; and

D. For such other and further relief as this Court determines appropriate and just.

#### **JURY DEMAND**

78. Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

By:

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